

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

THE STATE OF OHIO, ex rel. DAVE YOST,  
OHIO ATTORNEY GENERAL,

and

THE UNITED STATES OF AMERICA

Plaintiffs,

v.

NORFOLK SOUTHERN RAILWAY  
COMPANY and NORFOLK SOUTHERN  
CORPORATION,

Defendants/Third-  
Party Plaintiffs,

v.

OXY VINYLs LP, GATX CORPORATION,  
GENERAL AMERICAN MARKS  
COMPANY, TRINITY INDUSTRIES  
LEASING COMPANY, SMBC RAIL  
SERVICES LLC, DOW CHEMICAL  
INCORPORATED, and UNION TANK CAR  
COMPANY,

Third-Party  
Defendants.

Civ. Action No.: 4:23CV517  
4:23CV675

Hon. John R. Adams

**THE DOW CHEMICAL COMPANY’S MOTION TO DISMISS NORFOLK SOUTHERN  
RAILWAY COMPANY’S AND NORFOLK SOUTHERN CORPORATION’S THIRD-  
PARTY COMPLAINT FOR FAILURE TO STATE A CLAIM**

Third-Party Defendant The Dow Chemical Company, incorrectly named as Dow Chemical Incorporated (“Dow”), moves to dismiss Defendants/Third-Party Plaintiffs Norfolk Southern Railway Company’s and Norfolk Southern Corporation’s (collectively, “Norfolk Southern”) Third-Party Complaint against it under Federal Rule of Civil Procedure 12(b)(6). For

the reasons stated more particularly in the accompanying Memorandum, incorporated by reference herein, the Court should dismiss Norfolk Southern's claims against Dow with prejudice.

Dated: September 15, 2023

Respectfully submitted,

By: /s/ James D. Robenalt

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The Dow Chemical Company*

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 15, 2023, a copy of the foregoing was served on all parties of record via the Court's CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ James D. Robenalt

James D. Robenalt